

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RLI INSURANCE COMPANY,

07 Cv. 9546 (JBD)(HP)

Plaintiff,

-against-

JDJ MARINE, INC.

Defendant.

-----X
**AFFIDAVIT IN
OPPOSITION TO
COMMERCE BANK, N.A.
MOTION TO INTERVENE
AS OF RIGHT**

STATE OF NEW YORK)
s.s.:
COUNTY OF NEW YORK)

JOHN A.V. NICOLETTI, being duly sworn, deposes and says:

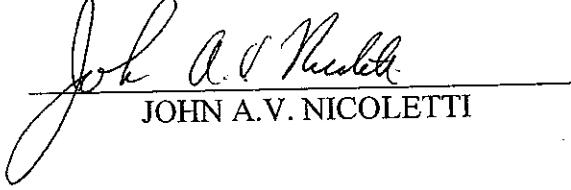
1. I am duly admitted to practice law in the State and Federal Courts of New York and before this Honorable Court and am a member of the law firm of NICOLETTI HORNIG & SWEENEY, attorneys for Plaintiff RLI Insurance Company (hereinafter "RLI") in the above captioned action.
2. I am fully familiar with all of the pleadings and proceedings in this action.
3. This affidavit is submitted in opposition to Commerce Bank N.A.'s (hereinafter "Commerce") Motion to Intervene as of Right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure.
4. The purpose of this Affidavit is to place before the Court the following evidence:

5. Annexed hereto as Exhibit "1" are true and accurate copies of the Affidavits of Service related to RLI's personal service of a Summons and Complaint upon JDJ Marine, Inc. (hereinafter "JDJ").

6. Annexed hereto as Exhibit "2" is a true and accurate copy of a Stipulation dated December 5, 2007, between the undersigned and FRICKE & SOLOMON, attorneys appearing for JDJ in this action, which extended JDJ's time to file its Answer and/or otherwise move as to RLI's Complaint to January 3, 2008.

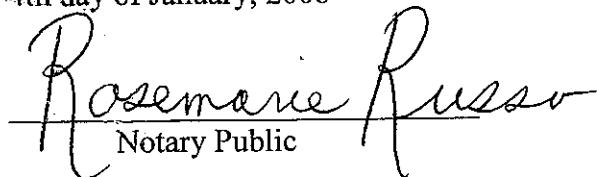
7. Annexed hereto as Exhibit "3" is a true and accurate copy of the Amended Complaint filed on January 2, 2008, which includes copies of Policy No. HUL0100185 (Exhibit "A") and the Final Judgment and Order of Arrest of Vessel and Possession of Collateral issued by the Hon. Gerald E. Lynch in the Southern District of New York on April 20, 2007 (Exhibit "B").

8. Annexed hereto as Exhibit "4" is a true and accurate copy of a letter from the undersigned to the Court dated December 7, 2007.



JOHN A.V. NICOLETTI

Sworn to before me this
4th day of January, 2008



ROSEMARIE RUSSO
Notary Public

ROSEMARIE RUSSO
Notary Public, State of New York
No. 01RU463499
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Dec. 31, 2010

TO:

Fricke & Solomon
Attorneys for Defendant
JDJ MARINE, INC.
Richard M. Fricke (RF-7486)
622 Barlow Avenue
Staten Island, New York 10312
Tel: 718-984-2626
Fax: 718-984-5820
E-mail:rfricke@metrolaw.com

Ostrowitz & Ostrowitz, Esqs
Attorneys for *COMMERCE BANK, N.A.*
Alan R. Ostrowitz (AO-7173)
150 Broadway, Suite 2206
New York, New York 10038
Tel: 212-509-2800
Fax: 732-446-5837
E-mail:ostrow.law@verizon.net

Requested papers to be sent to:
225 Gordons Corner Road, Suite 1-J
Manalapan, New Jersey 07726

X:\Public Word Files\7\202\Legal\AVN affidavit in opposition to intervene.GSR.S.RR.1.4.08.doc

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
S.S.:
COUNTY OF NEW YORK)

ROSEMARIE RUSSO, being duly sworn, deposes and says:

I am employed by the firm of NICOLETTI HORNIG & SWEENEY, attorneys for the plaintiff. I am not a party to this action, am over 18 years of age and reside in Nassau County, New York.

On January 4, 2008, I served the annexed **AFFIDAVIT IN OPPOSITION TO COMMERCE BANK, N.A. MOTION TO INTERVENE AS OF RIGHT**, upon the following:

Fricke & Solomon
Attorneys for Defendant
JDJ MARINE, INC.
Richard M. Fricke (RF-7486)
622 Barlow Avenue
Staten Island, New York 10312
Tel: 718-984-2626
Fax: 718-984-5820
E-mail: rfricke@metrolaw.com

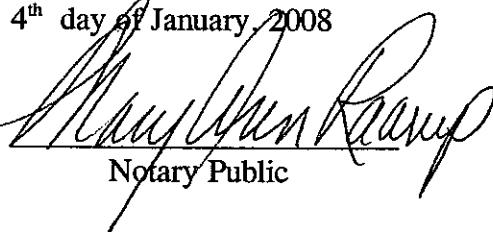
Ostrowitz & Ostrowitz, Esqs
Attorneys for *COMMERCE BANK, N.A.*
Alan R. Ostrowitz (AO-7173)
150 Broadway, Suite 2206
New York, New York 10038
Tel: 212-509-2800
Fax: 732-446-5837
E-mail: ostrow.law@verizon.net

Requested papers to be sent to:
225 Gordons Corner Road, Suite 1-J
Manalapan, New Jersey 07726

at the addresses designated by said attorneys for that purpose, by depositing true copies of same enclosed in postpaid, properly addressed wrappers in an official depository under the exclusive care and custody of the United States Postal Services within the State of New York.


ROSEMARIE RUSSO

Sworn to before me this
4th day of January, 2008


Notary Public

MARY ANN RAARUP
Notary Public, State of New York
No. 01RA4874099
Qualified in Suffolk County
Certificate filed in New York County
Commission Expires Oct. 20, 2010